IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO. 68 OF 2007
IN
SUMMARY SUIT NO.2812 OF 2006

Gopani International Pvt. Ltd. ..Plaintiff.
Vs.
Precision Engineering Tools &
Components & Ors. ..Defendants.

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Mr. L.C. Joshi for the Plaintiff.
Mr. G.V. Nagarsheth for the Defendants.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

2nd April, 2007.

P.C. :

The claim in the Summary Suit arises out of goods sold, supplied and delivered by the Plaintiff to the Defendants. The goods in question – H.R. coils and H.R. Sheets - were supplied in an aggregate amount of Rs.8,06,155/- between August and October, 2003. The material was received by the Defendants (save and except for a short of delivery of 90 kgs. as stated herein after). The delivery challans were duly acknowledged by the Defendants. The Defendants had issued a cheque dated 25th September, 2003 in the

amount of Rs.1,96,016/- towards the balance outstanding against Bill No. 72 dated 6th August, 2003 and a cheque dated 15th October, 2003 in the sum of Rs.2,49,387/- towards the outstandings of Bill No.79 dated 26th August, 2003. According to the Plaintiff, these cheques were not deposited on instructions of the Defendants that there was a strike in the factory and in view of the good business relations between the parties. A letter of demand was addressed on 7th April, 2006 to which there was a bald denial on 23rd May, 2006.

In the affidavit in reply, it has been admitted in paragraph 9 that there was a long strike in the factory of the Defendants with a resulting slack in the business. According to the Defendants the cheques referred to in the Plaint were issued on account and without prejudice to the right of the Defendants to dispute the correctness of the invoices and the quality of the material supplied. At the hearing of the Summons for Judgment the principal defence was that there was a short fall in the goods supplied to the extent of 90 kgs. which had been referred to in paragraph 5 of the affidavit in reply. In the rejoinder (paragraph 5) while dealing with this issue, the Plaintiff

averred that the bills that were raised and accepted by the Defendants were after considering the short fall of 90 kgs. Save and except for the short fall of 90 kgs., there is no dispute in regard to the balance of the claim. The Defendants have not disputed the quality of the material supplied. At the hearing of the Summons for Judgment, counsel appearing for the Defendants stated that the value of the short fall of 90 kgs. will work out approximately to Rs.2,500/-. The claim is in the amount of Rs.8,06,155/-.

It was faintly sought to be urged that this Court would have no jurisdiction to entertain and try the suit. In paragraph 10 of the Plaint it has been averred that the Defendants had placed their orders upon the Plaintiff in Mumbai; that the Defendants were bound and liable to make payment to the Plaintiff in Mumbai and had in fact made part payment through the UCO Bank in Mumbai. This has not been denied in paragraph 11 of the reply. In any event leave under Clause 12 of the Letters Patent has also been granted. There is no merit in the objection as to jurisdiction. Though the Defendants have their factory at Badlapur, a material part of cause of action has arisen

within the local limits of the Ordinary Original Civil Jurisdiction of this Court.

In the circumstances, the Defendants to not have a valid or tenable defence to the suit. However, having regard to the interests of justice, I am of the view that the Defendants should be granted leave to defend the Suit conditional on the deposit of an amount of Rs.8 lacs within a period of ten weeks from today. Upon deposit, the Written Statement shall be filed within a period of eight weeks thereafter.